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SUSAN M. HAFELI
202.775.3530
susan.hafeli@shawpittman.com

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May 26, 2000

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

DELIVERY VIA COURIER

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, S.W.

CC Docket No. 00-21

Washington, D.C. 20554

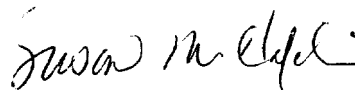
**Re: Application of Nevadacom for Review of Order Adopted
 Pursuant to Delegated Authority**

Dear Ms. Salas:

On behalf of Nevadacom, Inc. we hereby submit for filing an original and four copies of its above-captioned Application for Review.

Please refer all questions and correspondence regarding this filing to the undersigned.

Very truly yours,



Glenn S. Richards
Susan M. Hafeli
Counsel for Nevadacom, Inc.

Enclosures

ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

RECEIVED

MAY 26 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Application of Nevadacom for)
Review of Order Adopted Pursuant)
To Delegated Authority)
Denying Nevadacom's Petition for)
Expedited Declaratory Ruling)

CC DOCKET NO. 00-21

**APPLICATION OF NEVADACOM FOR REVIEW OF ORDER
ADOPTED PURSUANT TO DELEGATED AUTHORITY**

Glenn S. Richards
Susan M. Hafeli
Shaw Pittman
2001 Pennsylvania Avenue, N.W.
Suite 400
Washington, D.C. 20006-1852
Telephone: (202) 775-3949
Facsimile: (202) 296-6518

May 26, 2000

SUMMARY

Acting pursuant to delegated authority, on April 26 the Common Carrier Bureau dismissed the petition of Nevadacom, a record carrier, for expedited declaratory ruling. The petition had requested a declaratory ruling to alert the drafters of the Uniform Money Services Business Act (the “draft uniform act”) that absent a record carrier exemption, any state act modeled on the draft uniform act would be subject to limited federal preemption. The Bureau dismissed the petition on the grounds that it would be premature for the Commission to act because Nevadacom did not allege that any state had adopted the draft act.

The Bureau abused its discretion and committed prejudicial procedural error when it dismissed Nevadacom’s petition. The Bureau’s interpretation of the purpose of declaratory rulings conflicts with long-standing Commission precedent and policy that finds public interest benefits in *giving guidance* in areas where uncertainty exists. It is well-established that the Commission need not await a case or controversy in the judicial sense before it acts. Further, Consistent with precedent, the Bureau should have considered the consequences of its inaction, including the prospect of hardship and frustration of Commission policy, before dismissing the petition.

In addition, the Bureau made an erroneous finding as to a material question of fact by deferring action to state adoption of a draft act. States actually enact the final version of a uniform act. The materiality of this issue is demonstrated by the fact that the Bureau premised its dismissal on its erroneous understanding.

The Commission should reverse the Bureau’s Order, deem the petition appropriate for review and, because that petition is unopposed, expeditiously grant the relief requested therein.

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**Before the
Federal Communications Commission
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**APPLICATION OF NEVADACOM FOR REVIEW OF ORDER
ADOPTED PURSUANT TO DELEGATED AUTHORITY**

Pursuant to 47 C.F.R. § 1.115(a), Nevadacom, Inc. ("Nevadacom") files this Application requesting review by the Commission of action taken pursuant to delegated authority. Specifically, Nevadacom requests review of the April 26, 2000 Order by the Common Carrier Bureau (the "Bureau") in CC Docket No. 00-21, *Petition of Nevadacom for Expedited Declaratory Ruling that Telegraphic Money Order Service is an Information (Enhanced) Service and Not Subject to State Regulation* (hereinafter the "*Nevadacom Order*"). The *Nevadacom Order*, a copy of which is attached hereto, denies without prejudice Nevadacom's petition and terminates the proceeding. The Bureau asserts that it would be premature for the Commission to offer guidance on the issues raised in the petition because Nevadacom did not argue that any state had adopted the draft Uniform Money Services Business Act.

Under Section 1.2 of the Commission's rules, 47 C.F.R. § 1.2, the Commission may issue a declaratory ruling terminating a controversy or removing uncertainty. While this section bestows discretion regarding the issuance of such rulings, as explained herein the Bureau abused its discretion when it dismissed Nevadacom's petition. The Bureau's interpretation of the

purpose of declaratory rulings conflicts with long-standing Commission precedent and policy that finds public interest benefits in giving guidance in areas of uncertainty. It is well-established that the Commission need not await a case or controversy, in the judicial sense, before it acts. The Bureau also should have considered the consequences of its inaction with respect to both petitioner hardship and the frustration of Commission policy before dismissing the petition and terminating the proceeding. Further, the Bureau made an erroneous finding as to a material question of fact. Because the Bureau's decision to dismiss is predicated upon prejudicial procedural error, it should be reversed.

I. The Petition and Order

Nevadacom filed its Petition for a Declaratory Ruling pursuant to 5 U.S.C. § 554(e) and 47 C.F.R. § 1.2, which authorize the Commission to “issue a declaratory order to terminate a controversy or remove uncertainty.” Nevadacom's petition requested that the Commission issue a declaratory ruling to alert the National Conference of Commissioners on Uniform State Laws (“NCCUSL”) that the NCCUSL's draft Uniform Money Services Business Act (the “draft uniform act”) violates federal communications policy applicable to record carriers providing money transfer services and that, absent an applicable exemption, any state act modeled on the draft uniform act would be subject to limited federal preemption. *Petition* at 11.¹ Nevadacom filed the petition after the NCCUSL drafting committee rebuffed Nevadacom's efforts to establish in the draft uniform act an exemption limited to providers of telegraphic money order service.

¹ Record carriers are also referred to as telegraph companies. The petition described the Commission's statutory authority with respect to services provided by record carriers.

Nevadacom's petition does not seek to establish new Commission policy. Rather, it seeks to remove uncertainty by obtaining a Commission affirmation of existing policy. In support of its request, Nevadacom attached to its petition a copy of a 1980 Memorandum Opinion and Order ("MO&O") that construes telegraphic money order service to be an "enhanced service."

No parties responded to the Commission's Public Notice requesting comments on the petition.

The *Nevadacom Order* does not address the merits of Nevadacom's petition. Rather, it denies the petition solely on procedural grounds. As explained in Paragraph 2,

The petitioner does not argue that any state has adopted the draft model act about which it complains. *For this reason*, the Bureau believes it would be premature to address the concerns raised by Nevadacom at this time. *Therefore*, we will exercise our discretion under section 1.2 of the Commission's rule [footnote omitted] and deny the Nevadacom petition, without prejudice.

Nevadacom Order at ¶ 2 (emphasis added). Because the decision is without prejudice, Nevadacom may file a petition to preempt a state law or regulation "[i]f any state or states subsequently adopt a money transfer law or regulation that Nevadacom believes erects a barrier to entry." *Id.*²

² The invitation to proceed by individual preemption proceedings appears to contravene principles of administrative efficiency. Because such proceedings would involve the resolution of virtually identical issues, including the regulatory classification of telegraphic money order service provided by record carriers, a declaratory relief proceeding appears to be the most administratively efficient manner in which to proceed. *See, for example, TCI Cablevision of Ohio, Inc; Appeal of Local Rate Orders Issued by Fairfield and Hamilton, Ohio*, 13 FCC Rcd 10339, 1998 FCC LEXIS 2513 (May 27, 1998) at ¶ 1 ("We resolve both Appeals in this Order in the interest of administrative efficiency and because they raise the same issue.").

II. Question Presented for Review

Under Commission rules, applications for review must state the questions presented for review, with reference, where appropriate, to the findings of fact or conclusions of law. 47

C.F.R. § 1.115(b)(1). The questions presented herein are:

- whether it is appropriate for the Commission to issue a declaratory ruling for the purpose of offering guidance to the NCCUSL in its drafting of a uniform act;
- whether the Bureau should have considered the consequences of Commission inaction before dismissing the petition and terminating the proceeding;
- whether the Bureau erred in premising its dismissal on the absence of an allegation that one or more states had adopted the draft uniform act; and
- whether the Bureau's dismissal constitutes prejudicial procedural error.

The Commission is referred to Paragraph 2, as the *Nevadacom Order* contains neither findings of fact nor conclusions of law.

III. Factors Warranting Commission Consideration

Section 1.115(b)(2) lists the factors that warrant Commission consideration of an application for review. Applicants must “specify with particularity” the applicable factor(s). Three factors warrant Commission consideration of the questions presented herein. Specifically, the action taken pursuant to delegated authority (1) is in conflict with statute, regulation, case precedent, or established Commission policy; (2) is predicated on an erroneous finding as to an important or material question of fact; and (3) presents prejudicial procedural error. 47 C.F.R. § 1.115(b)(2) (i), (iv) and (v).

A. Conflict with Case Precedent and Commission Policy

The Bureau's decision to deny Nevadacom's petition as premature conflicts with Commission precedent and policy in that it rests on the implicit, but incorrect, assumption that an actual case or controversy is required to issue a declaratory ruling. The Commission has found it in the public interest to clarify areas of uncertainty or confusion prior to final action in courts and other fora. In addition, under Commission precedent and policy the Bureau should have evaluated the consequences of inaction before dismissing the petition.

1. Declaratory rulings are intended to give guidance, not resolve actual cases or controversies

The Bureau "believes" that it would be premature to address the concerns raised by Nevadacom's petition because "[t]he petitioner does not argue that any state has adopted the draft model act about which it complains." *Nevadacom Order* at ¶ 2. The *Nevadacom Order* thus deems a declaratory ruling premature until such time as Nevadacom alleges it is required to comply with state law – that is, until an actual case or controversy, or some particularized harm, exists.

In fact, the Bureau's belief conflicts with long-standing Commission precedent that a case or controversy in the judicial sense is *not* required to obtain declaratory relief. No case or controversy is required under Commission precedent because the purpose of declaratory rulings is to "give guidance" in areas where, as in the drafting of the NCCUSL uniform act, uncertainty or confusion exists.

The Commission addressed this precise point in *Amendment of Part 31*, 92 FCC 2d 864, 1983 FCC LEXIS 637 (1983), wherein it rejected an argument made by the Ohio Commission that a GTE petition to preempt an Ohio Commission ruling was premature:

GTE of Ohio seeks to have the Commission preempt an order of the Ohio Public Utilities CommissionGTE of Ohio states that failure of this Commission to

preempt the state will frustrate the achievement of federal policies adopted by this Commission

One procedural argument is raised by Ohio with respect to the petition. It contends that the question presented is premature since the order is subject to further reconsideration before the Ohio Commission pursuant to a request filed by GTE of Ohio. We do not agree since *the purpose of declaratory rulings is to give guidance to affected persons in areas where uncertainty or confusion exists. A case or controversy in the judicial sense is not required* (citing *North Carolina Utils. Comm'n v. FCC* (“NCUC I”), 537 F.2d 787, 790-91 (4th Cir.), cert. denied, 429 U.S. 0127, 97 S.Ct. 652, 50 L.Ed. 2d 631 (1976)). In this case, it appears necessary to issue such a ruling to clarify for the state commissions and the carriers the effect of our depreciation prescriptions.

Id. at ¶¶ 41-43 (emphasis added). The Commission reiterated this point as recently as December 1999, observing that it is “well established that the justiciability doctrines of standing and ripeness developed by federal courts do not apply to adjudications by federal administrative agencies such as the Commission. (Footnote and citations omitted.)” *American Communications Services, Inc., MCI Telecommunications Corp. Petitions for Expedited Declaratory Ruling Preempting Arkansas Telecommunications Regulatory Reform Act of 1997 Pursuant to Sections 251, 252, and 254 of the Communications Act of 1934, as amended*, CC Docket No. 97-100, FCC 99-386 (Dec. 23, 1999) (hereinafter “Arkansas Preemption Order”) at ¶ 19.

The Commission’s 1997 decision in *The Public Utility Commission of Texas et al.; Petitions for Declaratory Ruling and/or Preemption of Certain Provisions of the Texas Public Utility Regulatory Act of 1995*, 13 FCC Rcd 3460, 9 CR 958 (1997) (hereinafter “Texas PURA Order”) clearly elaborates the Commission’s position that public interest benefits accompany Commission rulings that offer guidance in areas where uncertainty or confusion exist. One part of the *Texas PURA Order* addresses a request for declaratory ruling by Teleport Communications Group (“TCG”) regarding the certification scheme articulated in Section 3.2532 of the 1995 Public Utility Regulatory Act of Texas (“PURA 95”). Southwestern Bell

Telephone Company (“SWBT”), which opposed TCG’s petition, argued that it would be “premature” for the Commission to issue the requested ruling, as a Texas state court was then reviewing the Texas Commission’s interpretation of the contested provision. The Commission was not persuaded by SWBT’s argument and granted TCG’s request. The Commission explained that the public interest “would best be served” by removing uncertainty concerning the status of the state provision under federal law:

Our decision today does not infringe on any judicial determination by the state court. Instead, *our ruling merely clarifies that if the court were to adopt SWBT’s interpretation of PURA 95 section 3.2532, that section would be at odds with the Communications Act.* Thus our decision does not infringe on the ability of the Texas court to carry out its functions. Moreover, we see no public interest benefit to delaying consideration of this issue. To the contrary, *we believe that the public interest would best be served by Commission action removing uncertainty concerning the status of PURA 95 section 3.2532 under the Communications Act.* (Footnote omitted).

Id. at ¶129 (emphasis added).

Nevadacom requested that the Commission act to remove uncertainty by affirming the status of telegraphic money order service as an enhanced or information service under federal communications law. Prompt Commission action was requested to give the NCCUSL drafting committee the opportunity to establish a narrow exemption applicable only to telegraphic money order service. Resolution of this issue prior to the NCCUSL’s anticipated July 2000 adoption of the draft uniform act was intended to eliminate the need to subsequently address this matter on a state-by-state basis. The Common Carrier Bureau’s decision to defer resolution until such time as one or more states actually enacts the uniform act is inconsistent with long-standing Commission precedent and policy that finds public interest benefits in giving guidance in areas where uncertainty or confusion exist.

2. In determining whether to review the merits of Nevadacom's petition, the Bureau should have evaluated the consequences of withholding adjudication.

The Bureau's dismissal rests on the belief that it would be premature to address the issues raised by Nevadacom. In determining whether to review the merits of a petition, however, the Commission evaluates the consequences of withholding adjudication. Relevant consequences include hardship to a petitioning party and potential frustration of regulatory policy.

The record before the Bureau demonstrates that Commission inaction will result in significant hardship in Nevadacom. As explained in the petition, the draft uniform act is intended to erect substantial regulatory barriers to market entry by establishing *inter alia* detailed licensing, bonding, and net worth requirements. Petition at 9-10; *see also Nevadacom Order* at ¶

1. By deferring Commission action until such time as a state actually enacts the NCCUSL uniform act, the Bureau's ruling places Nevadacom in a "paradigmatic hardship situation [] where a petitioner [will be] put to the choice between incurring substantial costs to comply with allegedly unlawful agency regulations and risking serious penalties for noncompliance." *Natural Resources Defense Council v. E.P.A.*, 859 F.2d 156, 166 (D.C. Cir. 1988). The hardship is magnified due to the prospect that the uniform act may be enacted by each of the 50 states.

In its *Arkansas Preemption Order*, the Commission concluded that it was "appropriate" to review the issues raised in the parties' petitions for declaratory relief because "withholding adjudication could cause significant hardship to Petitioners and other potential competing [local exchange companies] in Arkansas." *Arkansas Preemption Order, supra*, at ¶ 21. The *Arkansas Preemption Order* finds the prospect of hardship a sufficient predicate for reviewing the issues submitted for declaratory ruling. Similarly, the Bureau should have found the prospect of hardship to Nevadacom a sufficient predicate for reviewing the issues submitted by Nevadacom for declaratory ruling.

The potential frustration of federal communications policy, an issue raised in Nevadacom's petition, also constitutes a consequence the Commission has considered when determining whether to withhold adjudication:

Furthermore, if Petitioners are correct that the challenged provisions of the Arkansas Act hinder competition in local markets, delayed resolution would frustrate one of the primary purposes of the 1996 Act. (Footnote omitted.) Accordingly, we conclude that the issues raised in the petitions are appropriate for our review.

Id. Similarly, the issues raised in Nevadacom's petition are appropriate for review, as delayed resolution will frustrate long-standing Commission policy favoring open entry in the provision of information services. As explained in Nevadacom's petition, applying the provisions of the uniform act to telegraphic money order service, an enhanced service, would violate explicit federal communications policy promoting competition in enhanced, or information, services. Petition at 7-9. The *Nevadacom Order*, however, fails to even acknowledge the policy implications of Commission inaction.³

B. An Erroneous Finding as to an Important or Material Question of Fact

Because Nevadacom did not allege that any state had adopted the draft act, the Bureau concluded that Commission action was premature. *Nevadacom Order* at ¶ 2. The Bureau's conclusion is predicated on the erroneous belief that states adopt the *draft* version of a uniform act.

Nevadacom did not allege that any state had adopted the draft act because such a statement would have been factually inaccurate. States actually enact (with or without

³ Nevadacom pointed out that the draft uniform act "fails to include the telegraph company exemption currently found in numerous state laws." Petition at 9, fn.11. Absent Commission action a final version of the uniform draft act will contain no comparable exemption.

modification) the version of a uniform act that the NCCUSL has adopted. Once adopted by the NCCUSL, an act is no longer a “draft” version.⁴

At the time it issued the *Nevadacom Order* the Bureau was aware that the NCCUSL had not yet adopted a final version of the uniform act for state enactment. In a March 1, 2000 letter, Nevadacom informed the Commission that the NCCUSL proposed to adopt the draft uniform act during its summer 2000 meeting:

The next meeting of the NCCUSL drafting committee to discuss the draft model Act convenes March 10, 2000. Final reading of the draft model Act, and probable adoption, is scheduled for NCCUSL’s summer meeting, beginning July 28, 2000. Prompt Commission action that grants Nevadacom’s petition is therefore necessary to avert the NCCUSL’s adoption of an overly broad model Act that, with respect to record carriers providing telegraphic money order services, violates federal law.

Letter of Nevadacom to Janice M. Myles, March 1, 2000.⁵

The Bureau misconstrued a material question of fact by concluding that a state would adopt a draft uniform act. It compounded that error, to Nevadacom’s detriment, by relying on this misunderstanding to deem the petition premature.

Arguably, the Bureau may have relied on this “missing” allegation to dismiss the petition because it believed that no state law currently includes the types of barriers and regulatory burdens described in Nevadacom’s petition and, therefore, Commission inaction would be of limited or no consequence today. Certain states, however, currently have laws that impose barriers to entry for telegraph companies seeking to provide money transfer services.⁶ To the

⁴ NCCUSL procedures are described on-line at <http://www.nccusl.org/uniformacts.htm>.

⁵ The petition did not include the draft act’s proposed adoption date, as none had been scheduled as of the petition’s September 1999 filing date.

⁶ In footnote 11 of its petition, Nevadacom identified 17 states that exempt incorporated telegraph companies from laws governing money transfer services. Appendices A and B were attached in support of the conclusion that these statutory exemptions “are not

Footnote continued on next page

extent such regulation impermissibly conflicts with federal communications policy, as explained in the petition, the issuance of the requested declaratory rulings in fact would be of immediate benefit to Nevadacom. In those states in which the issue has arisen, issuance of the requested relief will clarify that state regulators may not apply to record carriers such as Nevadacom any state law, rule, or regulation that attempts to regulate the entry into or provision of telegraphic money order service.

C. Prejudicial Procedural Error

The Bureau's decision to deny Nevadacom's petition without prejudice and terminate the proceeding turned solely on the Bureau's procedural determination that it was "premature" for the Commission to provide the clarification that Nevadacom requested.⁷ This decision constitutes prejudicial procedural error.

1. The Bureau erred in deferring action until state enactment of the uniform act.

As explained in Section III.A.1, above, a determination that Commission action would be "premature" is inconsistent with well-established Commission precedent and policy. The Commission does not require an actual case or controversy prior to ruling on petitions for declaratory relief. The Bureau's conclusion that Nevadacom's petition was "premature" until such time as a state adopts or enacts the uniform act thus constitutes procedural error. That error

Footnote continued from previous page

were attached in support of the conclusion that these statutory exemptions "are not interpreted in a consistent manner by the states." Petition at 9. Information regarding state laws governing money transfer services was available at the NCCUSL website at the time Nevadacom filed its petition, although the website reflects the statutory interpretations of the NCCUSL and its staff, not the states themselves.

⁷ In *Amendment of Part 31, supra*, the Commission characterized as a "procedural argument" the Ohio Commission's unsuccessful contention that GTE's petition for declaratory ruling was premature.

is by definition prejudicial because it served as the basis for the Bureau's decision to terminate the proceeding before addressing the merits of Nevadacom's petition.

2. The Bureau erred in failing to consider the consequences of withholding adjudication.

As explained in Section III.A.2, above, the Bureau failed to consider the consequences of its inaction, including significant hardship to Nevadacom and potential frustration of federal communications policy. The Commission has previously adjudicated petitions for declaratory relief to avoid these consequences. The Bureau's failure to consider the consequences of withholding adjudication constitutes procedural error. Again, because that procedural error resulted in the dismissal of Nevadacom's petition it is, by definition, prejudicial.

IV. Requested Change

Pursuant to 47 C.F.R. § 1.115(b)(3), an application for review shall state with particularity the respects in which the action taken by the designated authority should be changed. Nevadacom requests that the Commission reverse the Bureau Order dismissing Nevadacom's petition, deem that petition appropriate for review and, because that petition is unopposed, expeditiously grant the relief requested therein.

V. The Form of Relief Sought

Pursuant to 47 C.F.R. § 1.115(b)(4), an application for review shall state the form of relief sought. Nevadacom requests that the Commission reverse the Bureau Order dismissing Nevadacom's petition, deem that petition appropriate for review and, because that petition is unopposed, expeditiously grant the relief requested therein.

The Commission need not publish notice and solicit comment before acting on Nevadacom's petition. As the public comment period on this matter only recently closed (March 24, 2000), no reason exists for the Bureau to reissue a Public Notice and request additional

comments before granting the relief petitioner requests. Moreover, because Nevadacom's petition requests clarification and application of an existing rule or policy, it falls within an exception to the mandatory notice and comment provisions of the Administrative Procedure Act. *See* 47 U.S.C.A. § 553(b)(3)(A); *see also Federal-State Joint Board on Universal Service*, 7 CR 109, 325, 12 FCC Rcd 8776, 9182 (1997).

Prompt Commission action on Nevadacom's petition has immediate public interest benefits. Granting the relief requested will alert the NCCUSL to the need to include in the final version of the draft act an exemption applicable to providers of telegraphic money order service. Including this exemption in the uniform act promotes administrative efficiency. The requested rulings will also offer immediate guidance to state regulators in those states which apply money transfer laws to record carriers. Issuance of the declaratory rulings will clarify for state regulators that they may not apply to record carriers such as Nevadacom any state law, rule, or regulation that attempts to regulate the entry into or provision of telegraphic money order service.

VI. Conclusion

Therefore, based on the foregoing, Nevadacom urges the Commission to grant this Application for Review.

Respectfully submitted,

NEVADACOM, INC.



May 26, 2000

Glenn S. Richards
Susan M. Hafeli
Shaw Pittman
2001 Pennsylvania Avenue, N.W., Suite 400
Washington, D.C. 20006
Telephone: (202) 659-3494
Facsimile: (202) 296-6518

Document #: 938094 v.1

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of Nevadacom for)	CC Docket No. 00-21
Expedited Declaratory Ruling That)	
Telegraphic Money Order Service Is)	
An Information (Enhanced) Service)	
And Not Subject to State Regulation)	
)	

ORDER

Adopted: April 26, 2000

Released: April 27, 2000

By the Deputy Chief, Common Carrier Bureau:

1. On September 17, 1999, Nevadacom, Inc. filed a petition seeking an expedited declaratory ruling by the Commission that telegraphic money order service is an "information service" as that term is defined in the Communications Act of 1934, as amended. The Commission subsequently sought public comment on the Nevadacom petition.¹ In its petition, Nevadacom asks the Commission to confirm that: (1) telegraphic money order service, or money transfer service, provided by record carriers is an information service and subject to the Commission's ancillary jurisdiction; (2) states may not impose any law, rule, or regulation that acts to bar or inhibit the provision of money transfer service by record carriers; and (3) to the extent a state imposes any law, rule, or regulation that attempts to regulate the entry into, or provision of, money transfer services by record carriers, that state law, rule, or regulation is preempted by federal law to the extent necessary to correct such inconsistency with federal policy.² Nevadacom states that it requests this ruling due to the drafting of a model state law by the National Conference of Commissioners on Uniform State Laws. According to Nevadacom, that model law -- the Uniform Money-Services Business Services Act -- would govern, *inter alia*, money transfer services provided by record carriers and would, if adopted by the states, erect substantial entry barriers and impose onerous regulation.³

¹ *Pleading Cycle Established for Comments on Nevadacom, Inc. Petition for Declaratory Ruling that Telegraphic Money Order Service Is an Information (Enhanced) Service and Not Subject to State Regulation*, Public Notice, CC Docket No. 00-21, DA 00-229 (rel. Feb. 8, 2000). We received no comments addressing the Nevadacom petition. On March 24, 2000, Nevadacom filed a letter noting the lack of comments and asking the Commission to rule expeditiously on its petition.

² Nevadacom Petition at 12.

³ *Id.* at 1, 9-11.

Federal Communications Commission

2. We decline to issue the declaratory ruling sought by Nevadacom. The petitioner does not argue that any state has adopted the draft model act about which it complains. For this reason, the Bureau believes it would be premature to address the concerns raised by Nevadacom at this time. Therefore, we will exercise our discretion under section 1.2 of the Commission's rules⁴ and deny the Nevadacom petition, without prejudice. If any state or states subsequently adopt a money transfer law or regulation that Nevadacom believes erects a barrier to entry, Nevadacom is free to file a petition to preempt that state law or regulation at that time.

3. Accordingly, IT IS ORDERED that the petition for declaratory ruling filed by Nevadacom, Inc. IS DENIED, without prejudice, and the proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Robert C. Atkinson, Deputy Chief
Common Carrier Bureau

⁴ Section 1.2 of the Commission's rules, 47 C.F.R. § 1.2, states that the Commission "may" issue a declaratory ruling terminating a controversy or removing uncertainty.